

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
South Dakota Network, LLC	)	File No. EB-02-TS-271
Santel Communications Corporation	)	
Sioux Valley Telephone, Inc.	)	
Splitrock Telecom Cooperative, Inc.	)	
Sully Buttes Telephone Cooperative, Inc.	)	
Valley Telecommunications Cooperative	)	
Association d/b/a Valley Cable & Satellite	)	
Communications	)	
	)	
Operators of Cable Systems in the States of:	)	
	)	
Iowa, Minnesota and South Dakota	)	
	)	
Request for Waiver of Section 11.11(a) of the	)	
Commission's Rules	)	

**ORDER**

**Adopted: April 16, 2003****Released: April 21, 2003**

By the Chief, Technical and Public Safety Division, Enforcement Bureau:

1. In this *Order*, we grant South Dakota Network, LLC and five of its owners, Santel Communications Corporation, Sioux Valley Telephone, Inc., Splitrock Telecom Cooperative, Inc., Sully Buttes Telephone Cooperative, Inc., and Valley Telecommunications Cooperative Association d/b/a Valley Cable & Satellite Communications, ("Joint Petitioners") temporary waivers of Section 11.11(a) of the Commission's Rules ("Rules") for 22 small cable television systems in the three above-captioned states. Specifically, we grant the Joint Petitioners a temporary, 12-month waiver of Section 11.11(a) of the Rules for one cable television system and a temporary, 26-month waivers of Section 11.11(a) of the Rules for 21 cable television systems. Section 11.11(a) requires cable systems serving fewer than 5,000 subscribers from a headend to either provide national level Emergency Alert System ("EAS") messages on all programmed channels or install EAS equipment and provide a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel by October 1, 2002.<sup>1</sup>

2. The Cable Act of 1992 added new Section 624(g) to the Communications Act of 1934 ("Act"), which requires that cable systems be capable of providing EAS alerts to their subscribers.<sup>2</sup> In

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<sup>1</sup> 47 C.F.R. § 11.11(a).

<sup>2</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 16(b), 106 Stat. 1460, 1490 (1992). Section 624(g) provides that "each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same

1994, the Commission adopted rules requiring cable systems to participate in EAS.<sup>3</sup> In 1997, the Commission amended the EAS rules to provide financial relief for small cable systems.<sup>4</sup> The Commission declined to exempt small cable systems from the EAS requirements, concluding that such an exemption would be inconsistent with the statutory mandate of Section 624(g).<sup>5</sup> However, the Commission extended the deadline for cable systems serving fewer than 10,000 subscribers to begin complying with the EAS rules to October 1, 2002, and provided cable systems serving fewer than 5,000 subscribers the option of either providing national level EAS messages on all programmed channels or installing EAS equipment and providing a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel.<sup>6</sup> In addition, the Commission stated that it would grant waivers of the EAS rules to small cable systems on a case-by-case basis upon a showing of financial hardship.<sup>7</sup> The Commission indicated that waiver requests must contain at least the following information: (1) justification for the waiver, with reference to the particular rule sections for which a waiver is sought; (2) information about the financial status of the requesting entity, such as a balance sheet and income statement for the two previous years (audited, if possible); (3) the number of other entities that serve the requesting entity's coverage area and that have or are expected to install EAS equipment; and (4) the likelihood (such as proximity or frequency) of hazardous risks to the requesting entity's audience.<sup>8</sup>

3. On June 24, 2002, the Joint Petitioners filed a request for temporary waivers of Section 11.11(a) until December 31, 2004 for 22 small, rural cable systems in the three captioned states. In support of this request, the Joint Petitioners state that 21 systems serve between 42 and 1,073 subscribers with the largest system serving 2,500 subscribers. Based on price quotes provided by EAS equipment manufacturers, the Joint Petitioners estimate that it would cost between \$8,000 and \$10,000 to install EAS equipment at each of the 22 cable systems for a total cost of approximately \$208,000. The Joint Petitioners assert that this cost will impose an unnecessary financial hardship for the systems and provide financial statements for 2000 and 2001 in support of this assertion. In addition, the Joint Petitioners submit that its subscribers will continue to have ready access to national EAS information from other sources, including its cable systems. The Joint Petitioners also submit that its subscribers will have access to EAS information through over-the-air reception of broadcast television and radio stations. Finally, the Joint Petitioners submit plans to begin interconnecting the 22 cable systems to a newly

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emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations ...." 47 U.S.C. § 544(g).

<sup>3</sup> *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Report and Order and Further Notice of Proposed Rule Making*, FO Docket Nos. 91-171/91-301, 10 FCC Rcd 1786 (1994) ("First Report and Order"), reconsideration granted in part, denied in part, 10 FCC Rcd 11494 (1995).

<sup>4</sup> *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Second Report and Order*, FO Docket Nos. 91-171/91-301, 12 FCC Rcd 15503 (1997) ("Second Report and Order").

<sup>5</sup> *Id.* at 15512-13.

<sup>6</sup> *Id.* at 15516-15518.

<sup>7</sup> *Id.* at 15513.

<sup>8</sup> *Id.* at 15513, n. 59.

constructed common headend in Sioux Falls, South Dakota. The Joint Petitioners believe that interconnection can be completed by December 31, 2004.

4. Based upon our review of the financial data and other information submitted by the Joint Petitioners, we conclude that a temporary, 12-month waiver of Section 11.11(a) is warranted for the largest cable system and temporary, 36-month waivers of Section 11.11(a) are warranted<sup>9</sup> for the remaining 21 cable systems. In particular, we find that the estimated \$208,000 cost to install EAS equipment at these cable systems could impose an unnecessary financial hardship on the Joint Petitioners.

5. We note that the Commission recently amended the EAS rules to permit cable systems serving fewer than 5,000 subscribers to install FCC-certified decoder-only units, rather than both encoders and decoders, if such a device becomes available.<sup>10</sup> Based on comments from equipment manufacturers, we anticipate that such a decoder-only system could result in significant cost savings to small cable systems.<sup>11</sup> On July 23, 2002, The Commission granted and equipment authorization for a decoder-only unit.<sup>12</sup>

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,<sup>13</sup> the Joint Petitioners **ARE GRANTED** a waiver of Section 11.11(a) of the Rules until October 1, 2003 for one cable television system in Brandon, South Dakota and **ARE GRANTED** a waiver of Section 11.11(a) of the Rules until December 31, 2004 for 21 cable television systems in the states of Iowa, Minnesota and South Dakota, as listed in Attachment A.

7. **IT IS FURTHER ORDERED** that the Joint Petitioners place a copy of this waiver in its systems files.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for the Joint Petitioners, Gerard J. Duffy, Esq., Blooston, Mordkofsky, Dickens, Duffy & Prendergast, 2120 L Street, N.W., Suite 300, Washington, D.C. 20037.

#### FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey

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<sup>9</sup> The 12-month waiver will extend from October 1, 2002, until October 1, 2003, and the 26-month waiver will extend from October 1, 2002, until December 31, 2004. We clarify that the waivers we are granting also encompass the EAS testing and monitoring requirements.

<sup>10</sup> *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket 01-66, FCC 02-64 at ¶ 71 (released February 26, 2002).

<sup>11</sup> One manufacturer estimated that an EAS decoder-only system can reduce the cost by 64% over what a cable operator would spend for an encoder/decoder unit. *Id.* at ¶ 70.

<sup>12</sup> See Public Notice, Notice Regarding FCC Certification of EAS Decoder, DA 02-2312 (released September 19, 2002).

<sup>13</sup> 47 C.F.R. §§ 0.111, 0.204(b) and 0.311.

Chief, Technical and Public Safety Division  
Enforcement Bureau

## Attachment A

## South Dakota Network, LLC

## Cable Systems:

## Waivers:

***Splitrock Telecom Cooperative, Inc.***

Brandon, South Dakota  
Howard, South Dakota

Granted Until October 1, 2003  
Granted Until December 31, 2004

***Santel Communications Corporation***

Woonsocket, South Dakota  
Mt. Vernon, South Dakota  
Ethan, South Dakota

Granted Until December 31, 2004  
Granted Until December 31, 2004  
Granted Until December 31, 2004

***Sioux Valley Telephone, Inc.***

Dell Rapids, South Dakota  
Plankinton, South Dakota  
Corsica, South Dakota  
Valley Springs, South Dakota  
Montrose, South Dakota  
Hills, Minnesota  
Larchwood, Iowa  
Inwood, Iowa

Granted Until December 31, 2004  
Granted Until December 31, 2004  
Granted Until December 31, 2004  
Granted Until December 31, 2004  
Granted Until December 31, 2004  
Granted Until December 31, 2004  
Granted Until December 31, 2004  
Granted Until December 31, 2004

***Sully Buttes Telephone Cooperative, Inc.***

Highmore South Dakota  
Wessington Springs, South Dakota  
Langford, South Dakota

Granted Until December 31, 2004  
Granted Until December 31, 2004  
Granted Until December 31, 2004

***Valley Telecommunications Cooperative Association  
d/b/a Valley Cable & Satellite Communications***

Eureka, South Dakota  
Glenham, South Dakota  
Herried, South Dakota  
Hosmer, South Dakota  
Leola, South Dakota  
Pollock, South Dakota

Granted Until December 31, 2004  
Granted Until December 31, 2004  
Granted Until December 31, 2004  
Granted Until December 31, 2004  
Granted Until December 31, 2003  
Granted Until December 31, 2004